

FINAL ORDER

Date: 7/01/09

IN THE MATTER OF
PAUL EDWARD SHORT

* BEFORE THE

* COMMISSIONER OF

* FINANCIAL REGULATION

APPLICANT

* OAH NO.: DLR-CFR-76B-08-28223

* * * * *

OPINION AND FINAL ORDER

INTRODUCTION

This matter came before the Commissioner of Financial Regulation (the "Commissioner") for argument on exceptions filed by Paul E. Short ("Applicant") to the Commissioner's Proposed Order of February 11, 2009 ("Proposed Order"). On December 12, 2008, Administrative Law Judge Geraldine A. Klauber (the "ALJ") issued a Recommended Order in which she proposed that Applicant's mortgage originator license application be denied. The Commissioner, in the Proposed Order, adopted the ALJ's Recommended Order in its entirety.

A hearing on Applicant's exceptions was held before the Commissioner on May 5, 2009. Applicant appeared on his own behalf and was not represented by counsel. Kris King, Assistant Attorney General, presented arguments on behalf of the Office of the Commissioner. The proceedings were recorded.

The record before the Commissioner at the exceptions hearing consisted of:

1. The Administrative Law Judge's Proposed Decision
2. The Proposed Order issued by the Commissioner
3. The Exceptions filed by Mr. Short
4. The Hearing Notice with Green Certified Mail Card
5. All exhibits admitted into the record

FINDINGS OF FACT

The Commissioner adopts the ALJ's Findings of Fact.

CONCLUSIONS OF LAW

The Commissioner affirms the ALJ's Conclusions of Law.

DISCUSSION

Applicant was denied a mortgage originator license because he was arrested and subsequently convicted in 1993 of unlawful manufacture, distribution, and possession of a controlled dangerous substance ("CDS"). Applicant was sentenced to ten years in prison and was released in approximately January 2002. (Prop. Dec. at 3.) After release, Applicant was subject to home detention for four and a half months, followed by a probationary period scheduled to expire in 2005. (Prop. Dec. at 3.) While in prison, Applicant attended addiction education programs and participated in the group Mothers Against Drunk Driving. (Prop. Dec. at 3.)

In September 2004, while still on probation for the 1993 conviction, Applicant was again arrested and pled guilty to the possession of a CDS. Applicant was given a sentence of three years, which was suspended, and an additional three years of probation. (Prop. Dec. at 3.) Applicant was required to attend the Break the Cycle program, that included urinalysis for one year, and to attend Alcoholics Anonymous meetings for six months. (Prop. Dec. at 3.) Applicant's probation finally expired in August 2008. (Prop. Dec. at 3.)

After release from prison, Applicant worked in the mortgage business for GMC Lending in Baltimore, Maryland, from 2002 through 2005. From 2005 through 2007

Applicant worked for First Continental Mortgage, and then in February 2007, Applicant began working for Residential Home Loans doing telemarketing. (Prop. Dec. at 4.)

I. Alleged Violation of Due Process

Applicant alleged in his written exceptions, without citing any legal support, that there was a violation of due process in his hearing before the ALJ “due to an absence of counsel.” (Applicant’s Exceptions at 1.) While Applicant certainly had the right to be represented by counsel at the hearing, he also had the right to represent himself—which he chose to do. COMAR 09.01.02.08. Moreover, Applicant represented himself again at the hearing on exceptions before the Commissioner, indicating that he himself did not place serious credence on this allegation. Applicant also failed to raise this issue at the exceptions hearing. Significantly, there is nothing in the record to indicate that Applicant attempted in any way to be represented by counsel at either hearing. In light of the foregoing, and without any legal basis to conclude that Applicant’s due process was violated, the Commissioner finds Applicant’s due-process argument to be without merit.

II. Alleged Failure to Give Fair Weight to Evidence of Rehabilitation

Applicant does not argue that there was an error of law because there was an absence of any legal basis to deny his license. Rather, he argues that he has rehabilitated himself and that the ALJ “gave less than fair weight” to “letters and affidavit” that he presumably felt supported this claim of rehabilitation. (Applicant’s Exceptions at 1.)

Contrary to Applicant’s assertions, however, the ALJ did take note of Applicant’s efforts to rehabilitate himself. After considering Applicant’s testimony and the evidence put into the record, the ALJ concluded that “[w]hile I admire the Applicant’s efforts to improve his life and be gainfully employed in a profession that he enjoys, enough time

has not passed to find that he has been truly rehabilitated and is committed to shunning criminal activities.” (Prop. Dec. at 8). The Commissioner agrees with the ALJ’s conclusion and does not find Applicant’s arguments regarding the ALJ’s failure to give fair weight to evidence of rehabilitation to be persuasive.

III. Applicant Argues Crimes Not Directly Related to the License Sought

Applicant argues that because his convictions are drug related, and not financial crimes, they do not have a bearing on his fitness to hold a mortgage originator license. The ALJ, to the contrary, found that there is a relationship between Applicant’s crimes and his fitness to hold the license. In considering this issue, the ALJ stated that:

A mortgage loan originator is in a position of trust as it involves financial transactions and presents the opportunity to take advantage of the public in the course of the transactions. The holder of that position requires sound judgment and proper regard for the law. The Applicant’s repeated violations of the law, with the second being committed while still on probation, indicates that he possesses extremely poor judgment, a disregard for the law and the propensity to engage in criminal activities. As a result, he does not meet the requirements of section 11-605(a)(2) of the Financial Institutions Article.

(Prop. Dec. at 6). The ALJ also found that “Applicant’s repeated convictions for drug offenses are an indication that his business as a mortgage loan originator will not be conducted honestly,” and that this is also a “sufficient basis for the Commissioner to deny his application pursuant to section 11-6159a)(5) of the Financial Institutions Article. (Prop. Dec. at 7).

The Commissioner, concurs with this assessment of the ALJ and likewise finds that that Applicant’s repeated crimes indicate his lack of fitness to hold a mortgage originator license and provide a sound basis to deny his application.

ORDER

The Commissioner having considered Applicant's exceptions and arguments in support thereof, and finding no errors of law or legal or factual basis to support Applicant's exceptions to the Proposed Order, it is:

ORDERED that the Applicant's mortgage originator license application be, and hereby is, **DENIED**, and it is further

ORDERED that the records and publications of the Commissioner reflect this decision.

7-1-09
Date

Sarah Bloom Raskin
Sarah Bloom Raskin
Commissioner of Financial Regulation